

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1221

Citations Affected: IC 13-14-8-8; IC 13-14-8-9; IC 13-21-3-14.

Synopsis: Water quality, solid waste districts, and environmental rules and policies. Conference committee report for EHB 1221. Establishes criteria for variances from water quality standards that are at least in part the basis of a National Pollutant Discharge Elimination System permit. Prohibits a solid waste management district from issuing permits for an activity that is already permitted by a state agency, except as expressly granted by statute. Requires the water pollution control board to adopt certain rules concerning outstanding state resource waters and exceptional use waters. Prohibits: (1) the air pollution control board, water pollution control board, or solid waste management board from adopting a new rule; and (2) the department of environmental management from adopting a new policy before July 1, 2005, if the new rule or policy would require certain industries to comply with standards of conduct that exceed federal standards. **(This conference committee report adds provisions that: (1) prohibit a solid waste management district from issuing permits for an activity that is already permitted by a state agency, except as expressly granted by statute; (2) require the water pollution control board to adopt certain rules concerning outstanding state resource waters and exceptional use waters; and (3) prohibit the air pollution control board, water pollution control board, solid waste management board, and the department of environmental management from adopting a new rule or policy before July 1, 2005, if the new rule or policy would require certain industries to comply with standards of conduct that exceed federal standards.)**

Effective: Upon passage; December 31, 2000 (retroactive); December 31, 2002 (retroactive); July 1, 2003.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1221 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 13-14-8-8 IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) **Except as provided in**
- 4 **section 9 of this chapter**, if a person who is affected by a rule adopted
- 5 by a board believes that the imposition of the rule would impose an
- 6 undue hardship or burden upon the person, the person may apply to the
- 7 commissioner for a variance from the rule.
- 8 (b) The commissioner may hold a public hearing on an application
- 9 submitted under subsection (a).
- 10 (c) If the commissioner determines that immediate compliance with
- 11 the rule would impose an undue hardship or burden upon the applicant,
- 12 the commissioner, except as provided in section 9 of this chapter, may
- 13 grant a variance from the rule for any period not exceeding one (1)
- 14 year.
- 15 (d) Upon the request of an applicant, the commissioner may renew
- 16 an expired variance if the commissioner determines that compliance
- 17 with the rule would continue to impose an undue hardship or burden
- 18 upon the applicant. Except as provided in section 9 of this chapter,
- 19 each renewal may be granted for a period not exceeding one (1) year.
- 20 SECTION 2. IC 13-14-8-9 IS AMENDED TO READ AS FOLLOWS
- 21 [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) ~~This section applies to A~~
- 22 ~~variance granted under section 8 of this chapter or IC 13-7-7-6 (before~~

its ~~repeal~~) from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit issued under this title **must meet the conditions specified in:**

(1) **40 CFR Part 132, Appendix F, Procedure 2.C; and**

(2) **rules adopted by the board.**

(b) Except as provided in subsection (c), a variance from a water quality standard of the water pollution control board under section 8 of this chapter or IC 13-7-7-6 (before its repeal) may be:

(1) granted for not more than five (5) years; and

(2) renewed for not more than five (5) years.

(c) A variance granted under section 8 of this chapter or IC 13-7-7-6 (before its repeal) from a water quality standard that is at least in part the basis of a National Pollutant Discharge Elimination System permit:

(1) issued under this title; and

(2) extended under IC 13-15-3-6 or IC 13-7-10-2(e) (before its repeal);

remains in effect until the National Pollutant Discharge Elimination System permit expires.

SECTION 3. IC 13-21-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) Except as provided in subsection (c) and section 14.5 of this chapter, the powers of a district do not include the following:

(1) The power of eminent domain.

(2) Except as provided in subsection (b), the power to exclusively control the collection or disposal of any solid waste or recyclables within the district by means that include the following:

(A) Franchising.

(B) Establishing a territory or territories within the district in which a person may provide service.

(3) The power to establish the type of service that a person must provide for the collection or disposal of solid waste or recyclables within the district.

(4) The power to establish fees that a person must charge for the collection or disposal of solid waste or recyclables within the district.

(5) The power to issue permits for an activity that is already permitted by a state agency, except as expressly granted by statute.

(b) If one (1) or more of the governmental entities in a district, at the time of the formation of the district, is a party to a contract providing that the persons contracted with have the exclusive right to collect or dispose of solid waste within the jurisdiction of the governmental entity, the district may enter into an extension of that contract.

(c) Subsection (a) does not apply to activities conducted as part of a household hazardous waste collection and disposal project.

SECTION 4. [EFFECTIVE DECEMBER 31, 2000 (RETROACTIVE)] (a) **As used in this SECTION, "board" refers to the water pollution control board established by IC 13-18-1.**

(b) **All waters designated under 327 IAC 2-1.5-19(b) as outstanding state resource waters shall be maintained and protected in their present quality in accordance with the**

antidegradation implementation procedures for the outstanding state resource waters established by the board for waters in the Great Lakes system. This SECTION does not affect the authority of the board to amend 327 IAC 5-2-11.7. Any rule adopted by the board contrary to this standard is void.

(c) All waters designated as outstanding state resource waters under 327 IAC 2-1-2(3) and waters designated as exceptional use waters under 327 IAC 2-1-6(i) shall be maintained and protected in accordance with 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2). If a permittee seeks a new or increased discharge for which a new or increased permit limit is required and that amounts to a significant lowering of water quality, the permittee shall demonstrate an overall improvement in water quality in the outstanding state resource water or exceptional use water, subject to:

(1) the approval of the department of environmental management; and

(2) IC 13-18-3-2(m)(2)(A) and IC 13-18-3-2(m)(2)(B).

(d) Any rule adopted by the board before the effective date of this SECTION is void to the extent that it:

(1) is inconsistent with this SECTION; or

(2) requires protection of waters beyond the protection required by 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2).

(e) Before July 1, 2004, the board shall amend 327 IAC 2-1-2, 327 IAC 2-1-6, and 327 IAC 2-1.5-4 to reflect this SECTION.

(f) This SECTION expires on the earlier of:

(1) the effective date of the rule amendments adopted by the board under subsection (e); or

(2) July 1, 2006.

SECTION 5. [EFFECTIVE DECEMBER 31, 2002 (RETROACTIVE)] (a) Until July 1, 2004, the following apply to a water body designated before October 1, 2002, as an exceptional use water:

(1) The water body is subject to the overall water quality improvement provisions of IC 13-18-3-2(l).

(2) The water body is not subject to a standard of having its water quality maintained and protected without degradation consistent with the provisions of P.L.140-2000.

(b) Before July 1, 2004, the water pollution control board established under IC 13-18-1 shall:

(1) determine whether, effective July 1, 2004, to designate as an outstanding state water each water designated before October 1, 2002, as an exceptional use water under 327 IAC 2-1-11; and

(2) complete rulemaking to make any designation determined under subdivision (1).

(c) This SECTION expires July 1, 2006.

SECTION 6. [EFFECTIVE UPON PASSAGE] (a) Before July 1, 2005, the:

(1) air pollution control board, water pollution control board, or solid waste management board may not adopt a new rule; and

(2) department of environmental management may not adopt

1 a new policy;
2 if the new rule or policy would require any industry described in
3 subsection (b) that experienced at least a ten percent (10%) job loss
4 or a ten percent (10%) decline in production during calendar years
5 2001 and 2002 to comply with a standard of conduct that exceeds
6 the standard established in a related federal regulation or
7 regulatory policy.
8 (b) The following are the industries referred to in subsection (a)
9 functioning under the following primary Standard Industrial
10 Classification (SIC) codes:
11 (1) Blast furnaces and steel mills (3312).
12 (2) Gray and ductile iron foundries (3321).
13 (3) Malleable iron foundries (3322).
14 (4) Steel investment foundries (3324).
15 (5) Steel foundries (3325).
16 (6) Aluminum foundries (3365).
17 (7) Copper foundries (3366).
18 (8) Nonferrous foundries (3369).
19 (c) This SECTION expires July 1, 2005.
20 SECTION 7. An emergency is declared for this act.
 (Reference is to EHB 1221 as printed April 1, 2003.)

Conference Committee Report
on
Engrossed House Bill 1221

Signed by:

Representative Bottorff
Chairperson

Senator Gard

Representative Wolkins

Senator Lewis

House Conferees

Senate Conferees